CF0000058868

(02)

Division Bench (Criminal)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 233 OF 1992.

APPELLANT :- Niranjansingh alias Bhagat aged about 35 years, son of Pitar, Gond, resident of Belsara, P.S. Takhatpur, district Bilaspur.

(Jail)

Versus

RESPONDENT :- State of M.P.

CRIMINAL APPEAL UNDER SECTION 378(2) OF THE CRIMINAL PROCEDURE CODE.

1279/2-92 S. Yadav Advocate

E.D.P. 3-2-92

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1279/ 2-92 Shri ... Advocate

Filed on ...

D.P.R. 2.2.92

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A.F.R

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 233/1992

Niranjan Singh @ Bhagat

Vs.

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Dilip Raosaheb Deshmukh
Judge

25-07-2005

Hon'ble Shri Justice Fakhruddin

I agree

Sd/-
Fakhruddin
Judge

26-07-2005

Post for 26-07-2005

Sd/-
Fakhruddin
Judge

26-07-2005

Ghavalem
(Arun Kumar)
ADV

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(33)

HIGH COURT OF CHHATTISGARH AT BILASPUR

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Niranjan Singh @ Bhagat

Vs.

State of Madhya Pradesh (now Chhattisgarh)

CORAM: HON'BLE SHRI FAKHRUDDIN &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ.

Shri Arun Kochar for the appellant.

Shri Ravindra Agrawal, P.L. for the State.

J U D G M E N T

(Delivered on -07-2005)

Per Dilip Raosaheb Deshmukh, J.

1. This appeal is directed against the judgment dated 03rd December, 1991 delivered by Shri C. B. S. Patel, VIth Additional Sessions Judge, Bilaspur in Sessions Case No. 259/90 whereby the accused appellant has been convicted under section-302 of the I.P.C. for committing murder of Gowardhan Das Manikpuri on 28-06-1990 at about 4 P.M. in Village-Belsara, Police Station-Takhatpur, District-Bilaspur and sentenced to imprisonment for life.

2. Briefly stated the prosecution story is that due to the previous enmity on account of quarrel during Gram Panchayat and Lok Sabha Election duty, the accused appellant Niranjan Singh @ Bhagat assaulted Gowardhan Das Manikpuri @ Muswa by an iron Kudari and Bamboo lathi in the field of Jagananth Mochi at about 4 P.M. on 28-06-1990. Gowardhan das Manikpuri alias Muswa succumbed to the injuries on the spot. Jhaduram PW-2, Malkham PW-3, Shiv Kumari PW-13 saw the occurrence.

3. Govind Das, brother of the deceased lodged F.I.R. Ex.P-13 in Police Station-Lormi. During Investigation on 30-06-1990, on the basis of memorandum vide Ex.P-1 of the accused appellant, one Bamboo stick, one iron kudari, one old lungi having blood like stains, one cotton chaddi having blood like stains were seized from the accused appellants vide Ex.P-2.

4. Dr. R.K. Bhange, Pw-6 conducted the autopsy on the dead body of Gowardhan Das and found the following external injuries :

(i) Incised looking wound 2x1c.m. & 1x1/2c.m. muscle deep over left leg.

(ii) Incised looking wound 1 cm x ½ cm just below Knee.

(iii) Deep incised looking wound 4x1 ½ x 3 ½ cm. over lateral corner of left eye.

(iv) Both upper & lower lid of left eye not clearly identified. In left orbital fossa, blood clot & piece of muscle present. There is no left eye ball.

(v) Skin deep incised wound 5 x 3 c.m. present over left side of parieto-occipital region of head.

(vi) Incised looking wound 4 x 1 c.m. present over left parietal scalp of head.

Dr. Bhange found fracture of left parietal bone 10 cm. in size, fracture of left side occipital bone 6 cm. in size, fracture of left lateral corner of orbital (fronto-temporal) in 3 cm. single pieces, rupture of left parietal region of membrane with liquified brain matter. He opined that cause of death was due to loss of blood and head injury and death was homicidal in nature. On examination of lathi and kudri seized from the accused appellant, Dr. Bhange opined that the injuries sustained by Gowardhan Das Manikpuri could be caused by them.

5. On 01-07-1990, on being informed by the accused that the deceased had also assaulted him by lathi and had also pressed his throat by nails the accused appellant was sent for medical examination. Dr. Habib found the following injuries on the person of the accused appellant:

(i) Minor scratch mark on Right side neck 1" lateral to mid line.
(ii) Minor scratch ½" lateral and to the left side of neck.
(iii) Linear scratch mark 2" on the left temple.
(iv) Fading contusion diffuse on the left side behind ear.
(v) Complaint of pain in back of chest wall. No visible injury seen.

Upon completion of investigation, the accused appellant was prosecuted under section-302 of the I.P.C.

6. The accused appellant abjured his guilt, pleaded innocence and false implication in defence and led no evidence.

7. The prosecution examined as many as 16 witnesses. The trial Court placed reliance upon the ocular version of Jhadu Ram PW-2, Malkham, PW-3, Shiv Kumari, PW-13, who had seen the accused appellant assaulting Gowardhan Das Manikpuri and convicted the accused appellant under section-302 of the I.P.C. for committing murder of Gowardhan Das.

8. The learned counsel for the appellant has mainly contended that there is serious discrepancy in the testimony of Jhadu Ram PW-2, Malkham, PW-3, Shiv Kumari PW-13 relating to the weapon of offence by which the accused appellant was alleged to have assaulted Gowardhan Das Manikpuri. He also argued that the testimony of Jhadu Ram PW-2, Malkham PW-3 that the accused appellant had assaulted Gowardhan Das by a lathi was rendered wholly unreliable due to the testimony of Dr. Bhange PW-6, who did not find any such injury on the dead body of the deceased which could be caused by a lathi. He also contended that the prosecution had failed to explain the injuries sustained by the accused appellants as a result of which defence of the appellant taken during arguments was plausible that he had sustained injuries during the occurrence at the hands of Gowardhan Das Manikpuri, who was the aggressor. It was also argued that if the testimony of ocular witnesses was to be believed, it must be held that the accused

had assaulted Gowardhan Das Manikpuri in the exercise of right of private defence and offence if any committed by the accused appellant could not travel beyond section-304-II of the I.P.C. Reliance was placed on the case of ***Dattu Shamrao Valake Vs. State of Maharashtra*** reported in ***2005 Cr.L.J (2555)*** and ***State of Rajsthan Vs. Bhanwar Singh*** reported in ***Volume-IV (2004)CCR-8(SC)*** and ***Siddha Gopal Vs. State of U.P.*** reported in ***2003 Cr.L.J.-4116*** and ***State of U.P. Vs. Shyam Veer*** reported in ***2005 Cr.L.J.-2606*** and ***Suresh Choudhari Vs. State of Bihar*** reported in ***2003 Supreme Court Cases (Criminal) 801.***

9. On the other hand, learned Panel Lawyer for the State argued that the testimony of ocular witnesses inspired confidence and were rightly relied upon by the trial Judge. It was also contended that the injuries sustained by the appellant were minor linear scratch marks and fading contusion on the left side behind ear and complaint of pain on the back of chest wall with no visible injury present. These injuries could have been sustained by the accused appellant while he was chasing Gowardhan Das Manikpuri in the filed to assault him. It was contended that the defence raised by the accused appellant in arguments definitely established the presence of the accused appellant at the scene of occurrence and assault by him over Gowardhan Das. The nature of injuries sustained by Gowardhan Das and the manner in which he was chased and assaulted by the appellant clearly established the intention of the accused and therefore the offence could in no case fall under section-304 part-II of the I.P.C.

10. We have considered the rival submissions and have also perused the record. So far as the homicidal nature of death of Gowardhan Das Manikpuri is concerned, Dr. Bhange has in his report described the injuries No.1 to 3 as incised looking wounds. Nowhere in his report or in his opinion relating to cause of death did he mention that these injuries had been

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caused by a sharp object. In his cross-examination-in-chief paragraph-11 also he has deposed that the injuries sustained by Gowardhan Das could be caused by the lathi and Kudri which were sent for his examination. Nothing has been elicited in cross-examination by the defence in this regard. In paragraph 15, he has opined that the deceased had sustained injuries caused by lathi and had also sustained other incised injuries. The fact that Gowardhan Das had sustained fracture size 10 cm of left parietal bone, fracture size 6 cm. of left occipital bone and fracture of left lateral corner of fronto-temporal bone in single pieces with rupture of left parietal region of membrane clearly proves beyond doubt that death of Gowardhan Das was homicidal. This finding of the trial judge was not assailed by the learned Counsel for the appellant in this appeal.

11. The trial Judge has convicted the appellant mainly on the testimony of ocular witnesses namely Shiv Kumari P.W.13, Jhaduram P.W.2 and Malkham P.W.3. We shall therefore examine whether the ocular testimony of these witnesses is reliable and brings home the guilt of the appellant under Section 302 I.P.C.

12. Shiv Kumari P.W.13 is the daughter of the deceased. She has deposed that at the time of occurrence when she was sitting in the Nalah to attend nature's call, she heard the cries of her father from the field of Jagannath whereupon she got up and saw that the accused appellant was chasing her father and assaulted him on the head and near the eye by kudri whereupon her father fell in the field. On seeing this, she got frightened and ran straight towards her home. This testimony is wholly unrebutted in cross-examination as no question has been asked regarding the occurrence to this witness. In the spot map Ex.P.12 prepared by Samaylal Lahare, Patwari P.W.10 the place from where Shiv Kumari saw the occurrence has been shown which matches with the testimony of this

witness. Apparently, this witness saw the occurrence from quite a distance.

13. Jhaduram P.W.2 has deposed that on the date of occurrence at about 4.00 P.M. when he was returning from the field, he saw that Gowardhan Das was standing in the field of Jagannath. The accused appellant came from behind and started assaulting Gowardhan by lathi. Gowardhan had a *Tutari* in his hand by which he blocked three assaults by the accused and when he could not do so any more he ran away whereupon the accused also started chasing him and continued assaulting him by lathi. In cross-examination, he has deposed that he saw the occurrence from about 50 to 60 yards and could not count the number of lathi blows dealt by the accused appellant on Gowardhan Das. No question to rebut his above testimony has been asked in cross-examination. The spot map Ex.P.12 corroborates the testimony of this witness.

14. Malkham P.W.3 has deposed that on the date of occurrence at about 4.00 P.M. while he was returning from the field and had reached the bank of Bandhwa tank, he saw the accused assaulting Gowardhan Das by lathi. He has also deposed that Jhaduram was following him from behind with a plough in his hand. In cross-examination, this witness has stated that he did not count the number of lathi blows dealt by the accused and could not say whether the appellant was holding a *Tutari* in his hand or not. He has also testified that he could not disclose as to one what parts of the body of Gowardhan Das did the appellant strike with lathi. According to this witness, he went home after seeing the occurrence and did not go to see the dead body after there was a gossip in the evening in the village that Gowardhan Das was dead. We find that in cross-examination, the testimony of this witness has also not been rebutted.

15. The inquest Ex.P-7 of the body of Gowardhan, which was done by A.S.I. C.K. Gajbhiye (PW-16) on 29-06-1990 also does not

mention the presence of Shiv Kumari (PW-13), Jhaduram (PW-2) and Malkham (PW-3) and explains why the name of the assailant does not find place in Dehati Nalishi EX.P-13 lodged by Govind Das on 28-06-1990 and inquest Ex.P-7 dated 29-06-1990. Presence of these witnesses at the scene of occurrence is natural and has not been challenged in cross-examination. Nothing has been elicited in cross-examination to show that these witnesses bore any grudge against the appellant or had any reason to falsely implicate him.

16. Nothing has been elicited in cross-examination of Shiv Kumari P.W.13, Jhaduram P.W.2, Malkham P.W.3 to show that the accused was first assaulted by the deceased or had sustained injuries during the occurrence at the hands of the deceased. In the statement under Section 313 Cr.P.C. also no such defence was taken. The counsel for the appellant has merely on the basis of the injuries sustained by the accused, made an abortive attempt to argue that the injuries were sustained by the accused appellant during occurrence and that deceased was the aggressor. On a careful consideration of the testimony of the three ocular witnesses mentioned above, we find that this argument is neither plausible nor tenable. The testimony of Jhaduram P.W.2 clearly shows that the deceased was defending the persistent lathi blows of the appellant by a *Tutari* and thereafter ran away to save his life. The accused appellant thereafter started chasing and assaulting Gowardhan Das. It clearly shows that the accused appellant was the aggressor and had dealt the fatal blows on Gowardhan Das. So far as the discrepancy relating to the weapon of offence is concerned, it appears natural because the witnesses had seen the occurrence from quite a distance. So far as the injuries sustained by the accused appellant are concerned, he had only superficial scratch marks on the neck and left temple and fading contusion on the left side behind ear. There is absolute no evidence on record to show that these injuries were inflicted on the accused appellant by the deceased. Not a single

question in this regard has been asked to any of the three eye witnesses. The injuries mentioned in para-5 (supra) found on 01-07-1990 on the accused appellant were medically opined to have been caused due to nail scratches and thus could also be self inflicted.

17. On a careful consideration of the evidence led by the prosecution of ocular witnesses Shiv Kumari P.W.13, Jhaduram P.W.2 and Malkham P.W.3 read with the testimony of Dr. Bhange, we find that the trial Court rightly relied upon the ocular testimony for holding that the accused appellant had intentionally caused the death of Gowardhan Das. So far as the nature of offence is concerned, the testimony of Jhaduram P.W.2 clearly shows that the accused appellant repeatedly assaulted Gowardhan Das over the head and after Gowardhan Das ran away, he chased him and repeatedly assaulted him by lathi on vital parts till he died. The nature of injuries and fractures on parietal, frontal and occipital bone sustained by Gowardhan Das clearly go to show that the accused appellant intended to cause the death of Gowardhan Das.

18. We have considered the case law relied upon by the learned Counsel for the accused appellant and find that the facts and circumstances in these citations are clearly distinguishable. So far as the case of ***Suresh Choudhari Vs. State of Bihar*** (Supra) is concerned, there were glaring omissions and contradictions in the testimony of sole eye witness and serious discrepancy between oral and medical evidence regarding the use of Bomb in that case. Multiple gun shot injuries were found on the deceased person, but only one empty cartridge was found at the scene, which was sent to ballistic expert. However, in the present case, no such situation exists. The ocular testimony of three witnesses mentioned above is not only natural but stands wholly unrebutted in cross-examination. The case of ***Dattu Shamrao Valake Vs. State***

of Maharashtra (Supra) is also clearly distinguishable, since, in that case, it was held that there was sudden provocation followed by free fight between the parties and it was not possible to say as to who initiated the fight. In that case, the accused No. 1 had fired shots only in the air and not on the deceased and had thereafter picked up an axe and dealt blow on the neck of the deceased, who succumbed to the injuries. From his conduct and manner of attack on old person, it was inferred that he was having knowledge that the said act was likely to cause death, but, he had no intention to cause death. Therefore, his conviction under section-302 of the I.P.C. was altered to Section-304 Part-I of the I.P.C. However, in this case there is absolutely no evidence of sudden and grave provocation. There is not even an iota of evidence to show that the deceased was either aggressor or had inflicted any injury on the appellant. The manner in which the accused appellant repeatedly assaulted the deceased by lathi and continued assaulting him on vital parts while chasing him, does not bring the case of the appellant within the exception-2 to section-300 of the I.P.C. The case of ***State of Rajsthan Vs. Bhanwar Singh*** (Supra) is also distinguishable, since, the three eye witnesses in that case had remained silent after witnessing the assault. These three ocular witnesses were sent by the widow to go and find out the body of her husband. It was, therefore, quite unnatural, that these witnesses had remained silent after witnessing the assault. There is no such situation in this case and nothing has been elicited in the cross-examination of the ocular witnesses as to why did they not report the matter to anyone or why did they not come to the spot at the time of inquest. In the absence of any such cross-examination, no adverse inference could be drawn against the ocular witnesses in this case. Thus, this citation also does not come to the aid of the appellants. The Case of ***Siddha Gopal Vs. State of U.P.*** (Supra) relied upon by the appellant is also clearly distinguishable and does not come to the aid of the appellants. In fact, it was held that the injuries caused by the appellants

were such that it showed that the appellants had common intention to commit murder. In fact, we find that this citation goes against the appellant. The Case of ***State of U.P. Vs. Shyamveer*** (Supra) relates also to a case of grave and sudden provocation in which the accused persons were found entitled to the benefit of exception-1 to section-300 of the I.P.C. As mentioned earlier no such situation exists in the instant case. We, therefore, find that the citations relied upon by the learned Counsel for the appellant do not help the appellant in any manner.

19. We, therefore, affirm the finding of the trial Court that the accused appellant intending to cause death inflicted fatal injuries on vital parts of Gowardhan Das resulting in his death and was thus guilty under Section 302 I.P.C. for committing murder of Gowardhan Das Manikpuri.

20. In the result, we find no substance in this appeal, which is accordingly dismissed.

Sd/-
Fakhruddin
Judge
26-07-2005

Sd/-
Dilip Raosaheb Deshmukh
Judge
26-07-2005

Anjani/Satish